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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,916	01/08/2002	Ming Jia	71493-1042/pw	1307
7380	7590	02/12/2007		
SMART & BIGGAR P.O. BOX 2999, STATION D 900-55 METCALFE STREET OTTAWA, ON K1P5Y6 CANADA			EXAMINER GHULAMALI, QUTBUDDIN	
			ART UNIT	PAPER NUMBER
			2611	
			MAIL DATE	DELIVERY MODE
			02/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

RD

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/038,916	Applicant(s) JIA ET AL.	
	Examiner Qutub Ghulamali	Art Unit 2611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: 18-32, 34, 35 and 38.
 Claim(s) objected to: 37.
 Claim(s) rejected: 1-16, 36, 40 and 41.
 Claim(s) withdrawn from consideration: _____.

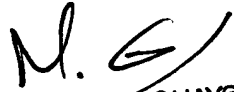
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The applicant alleges that the combined art of ten Brink, Stein and Balachandran do not disclose use of correlations computed in the matter claimed for use as a quality metric and that there is no motivation to combine. The examiner disagrees. The examiner conducted a thorough review and concludes that as noted in the Final Office Action, the art of ten Brink, Stein and Balachandran discloses every feature of the claimed invention that includes apparatus adapted to feed the channel quality back to a transmitter for use in determining and applying appropriate coding rate and modulation (Balanchandran, fig. 11, elements 202, 204, 208 (col. 9, lines 56-67; col. 10, lines 1-17, col. 13, lines 65-67; col. 14, lines 1-42). As to applicant's remarks regarding motivation/reason to combine the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F. 2d 1071, 5 USPQ 2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F. 2d 347, 21 USPQ 2d 1941 (Fed. Cir. 1992). In this case, as disclosed a proper relevancy exists in ten Brink for combining the limitations in the art of Stein as highlighted in the previous office action. Therefore, in response to applicant's arguments against the individual references, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F. 2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F. 2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As to claims 4 and 7, the limitation - feeding back the channel quality indicator back to a transmitter for use in determining and applying an appropriate coding rate and modulation is same or similar to limitation recited in claim 1 and therefore, is treated likewise. The examiner concludes that ten Brink, Stein and Balanshandran combined as a whole, therefore, discloses all limitation of the claim rendering the applicant's argument/remarks moot.


MOHAMMED GHAYOUR
SUPERVISORY PATENT EXAMINER